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10 **BEFORE THE**  
11 **PHYSICAL THERAPY BOARD**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against: Case No. 1D-2000-62612

15 WILLIAM POSNER  
16 1008 C Ocean Lane  
Imperial Beach, CA 91932

**A C C U S A T I O N**

Physical Therapist License No. 14754

Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Steven K. Hartzell (Complainant) brings this Accusation solely in his  
22 official capacity as the Executive Officer of the Physical Therapy Board of California,  
23 Department of Consumer Affairs.

24 2. On or about January 15, 1988, the Physical Therapy Board issued Physical  
25 Therapist License No. 14754 to WILLIAM POSNER (Respondent). The Physical Therapist  
26 License was in full force and effect at all times relevant to the charges brought herein and will  
~ expire on April 30, 2005, unless renewed.

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## JURISDICTION

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3. This Accusation is brought before the Physical Therapy Board (Board),

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Department of Consumer Affairs, under the authority of the following laws. All section

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references are to the Business and Professions Code unless otherwise indicated.

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4. Section 2609 of the Code states:

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The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.

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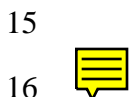
5. Section 2660 of the Code states:

The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon, or issue subject to terms and conditions any license, certificate, or approval issued under this chapter for any of the following causes:



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(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.



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6. Section 2234 of the Code states:

The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

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(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical Practice Act].

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Section 726 of the Code states:

The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

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This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when the physician and surgeon provides medical treatment, other than



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2 psychotherapeutic treatment, to his or her spouse or person in an equivalent  
3 domestic relationship.

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6 8. California Code of Regulations (ACCR@), title 16, section 1399.20, states:

7 For the purposes of denial, suspension or revocation of a license or  
8 approval, pursuant to Division 1.5 (commencing with Section 475) of the code, a  
9 crime or act shall be considered to be substantially related to the qualifications,  
10 functions or duties of a person holding a license or approval under the Physical  
11 Therapy Practice Act if to a substantial degree it evidences present or potential  
12 unfitness of a person to perform the functions authorized by the license or  
13 approval in a manner consistent with the public health, safety or welfare. Such  
14 crimes or acts shall include but not be limited to the following:



15 (a) Violating or attempting to violate, directly or indirectly, or  
16 assisting in or abetting the violation of, or conspiring to violate any  
17 provision or term of the Physical Therapy Practice Act.

18 (c) Violating or attempting to violate any provision or term of the  
19 Medical Practice Act.

#### 20 COST RECOVERY

21 9. Section 2661.5 of the Code states:

22 In any order issued in resolution of a disciplinary proceeding before the  
23 board, the board may request the administrative law judge to direct any licensee  
24 found guilty of unprofessional conduct to pay to the board a sum not to exceed the  
25 actual and reasonable costs of the investigation and prosecution of the case.

#### 26 FIRST CAUSE FOR DISCIPLINE



27 (Sexual Misconduct)

28 10. Respondent is subject to disciplinary action under Code sections 726,  
29 2660(i), and 2234, in that he committed an act of sexual misconduct of a patient. The  
30 circumstances are as follows:

31 A. On or about September 28, 1995, respondent was hired by  
32 Tenet Home Care (ATenet@) as a physical therapist. Respondent was terminated  
33 from Tenet on July 21, 2000.

34 Donna P.

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2 B. Donna P. underwent physical therapy treatment after an  
3 extended stay at Alvarado Hospital. After her discharge, she was assessed by  
4 Jerry T., a physical therapist employed by Tenet. Jerry T. developed a series of  
5 stretching and walking exercises and assigned respondent to manage Donna P.'s  
6 care. In mid July 2000, respondent went to the home of Donna P. on at least two  
7 occasions. On one of the visits, respondent instructed Donna P. to go to her  
8 bedroom and lay face up on the bed. Donna P. assumed it was part of her session  
9 that had already included 30 minutes of upright stretching and walking exercises.  
10 Respondent told her to spread her legs and respondent rubbed her inner thigh,  
11 skin to skin, starting at her knee and stopped at her waist, when Donna P.'s  
12 granddaughter entered the room. Donna P. told her daughter, J. Pabst of the  
13 incident.

#### 14 SECOND CAUSE FOR DISCIPLINE

##### 15 (General Unprofessional Conduct)

16 11. Respondent is subject to disciplinary action under Code sections 2234 and  
17 2260(i), in that he engaged in general unprofessional conduct by sexually harassing and making  
18 inappropriate comments to a patient's care-giver, to a patient's daughter, and to a co-worker.  
19 The circumstances are as follows:

#### 20 Ann R.

21 C. On or about July 12, 2000, respondent went to the home of  
22 his patient Janet R., to render physical therapy. Ann R., Janet R.'s daughter, was  
23 in her bathroom getting dressed when respondent entered into her bathroom  
24 without knocking and uninvited. Respondent told Ann that she was a very sexy,  
25 gorgeous lady. Respondent, without consent, touched Ann's breasts, buttocks  
26 and between her legs in the perineal area.

#### 27 Robin P.

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D. On or about July 13, 2000, Robin P. was a care-giver for patient/client Mrs. B. of Tenet Home Care. While in the living room of patient Mrs. B=s home, Robin P. told respondent that the patient was in the bedroom. Robin P. pointed out and told respondent that the recliner is where the patient sits. Robin P. then sat in the chair next to the recliner. Respondent pulled up a chair and sat next to Robin P.. Respondent proceeded to lean towards Robin P. and came within a foot of her face. Respondent kept placing his hand on her knee and leg. Robin P. was wearing shorts. Respondent kept leaning towards Robin P. and she kept moving back from him. Respondent asked Robin P. if she was married, and Robin P. responded that she was happily married. Respondent asked Robin P. what days and times she worked and asked for her first and last name and telephone number. Robin P. gave respondent her employer=s telephone number. Robin P. then took respondent to the patient=s bedroom and introduced respondent as the physical therapist. Respondent started to rub Robin P.=s back and massage her shoulders and commented to the patient Awe like Robin@.

E. Respondent followed Robin P. everywhere she went. When respondent walked the patient out to the living room, he once again sat next to Robin P. instead of the patient. Respondent next demonstrated several techniques and asked Robin P. to copy his movements. Respondent instructed Robin P. to cross her arms in front of herself. He told her to stand up and then sit down. Respondent then stood in front of Robin P. and told her to keep her hands crossed. Respondent then reached down under Robin P.=s arms and rubbed her breasts with the heel of his hands. As respondent sat and spoke to the patient, he (respondent) rubbed the back of Robin P.=s legs up and down. When Robin P. moved to the kitchen, respondent followed her and grabbed her hand and wanted to pull her back into the living room. Respondent=s touching of Robin P. was without consent.

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2                   **Debbie S.**

3                   F.       Debbie S. was a co-worker of respondent in 1997. On  
4                   July 7, 1997, at a going-away party for another co-worker, a spot of salsa dripped  
5                   onto Debbie S.'s clothing landing on her breast. Respondent pointed to the spot  
6                   by touching Debbie S.'s breast, and uttered sexual remarks. Approximately 30  
7                   minutes later, respondent touched her breast again. Respondent's touching of  
8                   Debbie S. was without consent.

9                   G.       On or about August 18, 1997, Debbie S. stained her blouse.  
10                  The stain was near her breast. Later that day, at the physical therapy office,  
11                  respondent pointed out the stain by touching Debbie S.'s breast. Respondent's  
12                  touching was without consent.

13                                   **PRAYER**

14                  WHEREFORE, Complainant requests that a hearing be held on the matters herein  
15                  alleged, and that following the hearing, the Physical Therapy Board issue a decision:

- 16                  1.       Revoking or suspending Physical Therapist License No. 14754, issued to  
17                  WILLIAM POSNER;
- 18                  2.       Ordering WILLIAM POSNER to pay the Physical Therapy Board the  
19                  reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
20                  Professions Code section 2661.5;
- 21                  3.       Taking such other and further action as deemed necessary and proper.

22                  DATED: January 6, 2004

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24                                   Original Signed By:  
25                                   STEVEN K. HARTZELL  
26                                   Executive Officer  
                                 Physical Therapy Board of California  
                                 Department of Consumer Affairs  
                                 State of California  
27                                   Complainant

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